

**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – FEBRUARY 1, 2006**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 7:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Grzan, Sellers, and Mayor/Chairman Kennedy  
Late: Council/Agency Member Tate (arrived at 7:02 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**INTRODUCTIONS**

Director of Community Development Molloy-Previsich introduced new members of the Community Development Department as follows: Eric Marlatt, Senior Planner; Steve Golden, Associate Planner; Heather Phillips, Assistant Planner; Heidi Crouch, Office Assistant II (absent); and John Amos, Code Enforcement Officer.

Police Chief Cumming introduced the recently hired members of the Police Department: Officer Sara Alanis, Officer Joe Burdick, Officer Jeff Brandon, Officer Jason Broyer, Officer Joshua Norris (absent), Public Safety Dispatcher Idalia Echegoyen, Public Safety Dispatcher Lynette Madruga, Police Records Specialist Alison Comerford, and Cadet Ryan Halla.

**CITY COUNCIL REPORT**

Council Member Tate addressed the Community Conversation. He said that the Community Conversation is taking place at this time as the City is experiencing a budget crunch. He indicated the City is spending \$1.5 million more than it brings in (revenues). He said the City has a healthy surplus that it can draw down from, but the City cannot do so forever. The City needs to take a course of action to either lower its expenses or raise revenues. He stated the Council wants to make the decision on how to do so with a great amount of community input. This is the basis for the Community Conversation. He indicated the Community Conversation is a 2½ hour process and that the City is asking/encouraging everyone tied to Morgan Hill to participate. Although this is a big commitment of time, this is Morgan Hill's future and the Council would like to encourage and receive community input. He clarified that this is not a brainstorming session. The Council is not asking for creative input, but would appreciate this input. He indicated that the process is designed to be a facilitated process where tradeoffs are made

and individuals try to find common ground. He said that individuals who have participated in the Community Conversation seemed to have enjoyed the experience and the investment in time. He stated that the City Council would appreciate receiving as much input on this subject as possible.

### **CITY COUNCIL SUB-COMMITTEE REPORTS**

None

### **CITY MANAGER REPORT**

Acting City Manager Molloy Previsich stated that she did not have a City Manager's report to present.

### **CITY ATTORNEY REPORT**

Interim City Attorney Siegel indicated that he did not have a report to present this evening.

### **OTHER REPORTS**

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Dan Erlher, Chamber of Commerce, introduced Senior Vice-President of the California Retriever Training Association, Gary Bechtel. He informed the Council that this Association is headquartered in Morgan Hill. He indicated that he has been working with Mr. Bechtel and his colleagues in their consideration of hosting the 2007 National Retrieval Club Championships in Morgan Hill.

Mr. Bechtel informed the Council that he resides in Morgan Hill; stating that he has no vested interest in the championships. It is his hope that a decision will be made to bring the championships to Morgan Hill. He informed the Council that typically 100-150 individuals attend this event and generally will bring approximately \$1 million to a community. This will be a two-week event that will be held in November 2007. The event is proposed to be headquartered at Lakeside Ranch; using a lot of the surrounding areas. It is his hope Morgan Hill will be considered by the Association as it would be a good event for the community.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy announced that item 10 has been pulled from the Consent Calendar and that the item would be rescheduled for a future meeting. He indicated that there is a speaker in attendance for item 6.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-5 and 7-8 as follows:*

1.     **AWARD OF PROFESSIONAL SERVICES CONTRACT FOR A “TRAILS AND NATURAL RESOURCES STUDY”**

**Action:** **Authorized** the City Manager to Execute a Consultant Agreement with Royston Hanamoto Alley & Abey for Preparation of a Trails and Natural Resources Study which Shall Serve as the City’s Trails Master Plan, Subject to Review and Approval by the City Attorney.

2.     **AMENDMENT TO THE FINAL CONTRACT AMOUNT FOR CONSTRUCTION OF JACKSON OAKS BOOSTER STATION REHABILITATION PROJECT**

**Action:** **Approved** an Addition to the Final Contract Amount for the Jackson Oaks Booster Station Rehabilitation Project in the Amount of \$12,120, for a Total Contract Amount of \$1,101,791.

3.     **FINAL MAP APPROVAL FOR COYOTE ESTATES PHASE XI (TRACT 9735)**

**Action:** 1) **Approved** the Final Map, Subdivision Agreement and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement, Following Recordation of the Development Improvement Agreement.

4.     **FOURTH AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF HATCH & PARENT**

**Action:** **Authorized** the City Manager to Execute a Fourth Amendment to Agreement with the Law Firm of Hatch & Parent.

5.     **FIFTH AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**

**Action:** **Authorized** the City Manager to Execute a Fifth Amendment to Agreement with the Strombotne Law Firm.

7.     **ADOPT ORDINANCE NO. 1751, NEW SERIES**

**Action:** **Waived** the Reading, and **Adopted** Ordinance No. 1751, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING CHAPTER 18.73 (WATER CONSERVING LANDSCAPES) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING THE ESTABLISHMENT OF LANDSCAPE REGULATIONS PROMOTING THE EFFICIENT USE OF WATER.**

8.     **MINUTES FOR THE REGULAR CITY COUNCIL MEETING OF JANUARY 18, 2006**

**Action:** **Approved** as Submitted.

6.     **DOWNTOWN COMMUNITY SPECIAL EVENTS RULES**

Special Assistant to the City Manager Spier presented the staff report relating to the road closer time for special events in the downtown, specifically with the Independence Day, Inc. (IDI) organization. She stated that staff would like the Council to confirm the permit processing to allow the closure of downtown streets for events to held in the downtown as 9 p.m. on a Friday evening for a Saturday event or 3 hours prior to an event being held on Fridays. She indicated that the exception to the rule would be the IDI organization. She informed the Council that the IDI organization met with the downtown group and it was agreed that IDI would be grandfathered because they have a need to close the roads at noon or 2 p.m. on the day of the event. She indicated that there is a new requirement that stipulates that all organizations are to request funds/City co sponsorship by March 31. Should the Council approve the item this evening; staff will be sending the new special event form to all groups and request that the forms be returned to City staff so that the requests can be discussed during the budget process.

Bob Hunt thanked the Council for its many years of support for the Fourth of July event. He was pleased that everyone recognized that when you have a lot to set up; additional time is needed. In bringing the festival to the downtown this year, the event will bring thousands of individuals to the downtown; benefiting everyone in the community and downtown businesses. He thanked the Council for allowing IDI the opportunity to assist the community.

Council Member Sellers said that many hours went into making sure that all issues were resolved. Many hours were spent by a lot of volunteers, IDI and the Morgan Hill Downtown Association to talk about the mutual benefits. He commended staff; particularly Ms. Spier, for working through the many conflicting issues and coming up with a resolution that would end up on the consent calendar.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Rules as Stipulated, and Included a Special Event Request Form as Part of the Process.*

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

Mayor Grzan requested that item 9 and Council Member Carr requested that item 11 be removed from the Consent Calendar.

#### **10.    REDEVELOPMENT PLAN AMENDMENT CONSULTANT**

**Action:** ***Pulled** from the Agenda and Moved to a future meeting.*

#### **9.    SECOND QUARTER REPORT FROM THE CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT PARTNERSHIP**

Director of Business Assistance and Housing Services Toy indicated that for the last several years, the Redevelopment Agency (RDA) has contracted with the Chamber of Commerce to provide supplemental

economic development services. As part of the contract, the Chamber of Commerce is to provide a quarterly report to the Agency Board. He indicated that this is the second quarterly report.

Dan Erhler, Chamber of Commerce, addressed the Chamber's quarterly report, indicating that the report includes summaries for various items and activities that have occurred through the last quarter. It is his hope that the report is helpful and reflects the information requested by Agency Members the last time the Chamber presented its quarterly report (e.g., costs associated with each activity).

Mayor Pro Tempore Grzan stated that he was pleased with the content contained in the quarterly report as it is different from what was presented in the past. He was pleased that dollar amounts were identified as well as other quantifiable information under each activity. He requested Mr. Erhler go back to the first quarterly report and attach a dollar amount to those activities. He was pleased that the report included matrix information. He expressed concern that the Chamber is at 16% of the goal under private partnership funds to be raised. He inquired whether it is anticipated that this goal would be achieved.

Mr. Erhler said that funds have been received from private enterprise but continues to be a challenge. He stated the Chamber of Commerce continues to strive to move this percentage up.

Mayor Pro Tempore Grzan stated that over all, he was pleased with the direction of the report.

Mr. Erhler announced that the Chamber of Commerce moved today to 90 East Second Street and that phone and computer services have been temporarily hampered by the move. The Chamber is doing everything it can to have phone lines open once again.

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Accepted** the Report.*

## ***Redevelopment Agency Action (Continued)***

### **CONSENT CALENDAR:**

Agency Member Carr indicated that he would be recusing from voting/participating in the discussion of Consent Calendar item 11 as well as item No. 12 as he resides within 500 feet of both items. He excused himself from the Council Chambers.

#### **11.     SKEELS BUILDING AND CREST AVENUE APARTMENTS LOANS**

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Agency Member Carr absent: **Authorized** Staff to Prepare a New Loan Agreement with South County Housing (SCH) for the Skeels Building to: a) Provide a 20-year Term [through December 2025], b) Require SCH to make a One-Time Payment of \$50,000 Against the Existing Loan Prior to Executing the new Loan, c) Have the new Agency Loan Require Fixed Annual Payments of \$3,000, d) Authorize the Subordination of the new Agency Loan to a new Conventional Loan; 2) **Authorized** the Subordination of the Agency's Existing Loans with SCH for the Crest Avenue Apartments (Crest) to the New First Mortgage;*

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*and 3) **Authorized** the Executive Director to do Everything Necessary to Prepare, Negotiate and Execute Loan Documents, Subject to City Attorney Review and Approval.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **12. ZONING AMENDMENT, ZA-05-16/DEVELOPMENT AGREEMENT, DA-05-07: WRIGHT-MANANA - Ordinance Nos. 1752 and 1753, New Series**

Planning Manager Rowe presented the staff report on a request for the approval of a zoning amendment that would establish a precise development plan and a development agreement for a 15-unit project on 2.65 acres on Wright Avenue. He indicated that approximately 1.5 acres of the site will be deeded to the Santa Clara Valley Water District and an area is to be excavated as part of the planned Llagas Watershed Protection Project (PL566). In addition, the project will have an onsite storm water detention that will be continued underground. He addressed the open space that would introduce pathways linking the two cul de sacs with the opportunity for a future connection with the Water District's right of way. He said that concerns were raised at the Planning Commission meeting by area residents regarding drainage. He indicated that during heavy rains, the site will collect water because the existing conduit is functioning as a flow restrictor. He noted that some of the homes in the area have been built in the flood plain and were not elevated above the flood plane. Even though an undeveloped condition exists, there are opportunities for some flooding to occur. He informed the Council that the project would contain its own runoff on site. He indicated that the project is required to construct improvements that would not alter the existing flood area. He clarified that flood plane limits cannot occupy different areas as a result of the improvements, nor worsen the existing flooding conditions. He informed the Council that the project cannot fully mitigate drainage concerns until the down stream improvements are completed.

Mr. Rowe informed the Council that also discussed, at the Planning Commission meeting, were pepper trees that have been planted within the right of way. He indicated that the developer proposes to remove the pepper trees and replace them with street trees that are a part of the front yard landscaping. Staff believes these improvements would mitigate the necessity for keeping the pepper trees in place. He indicated that pepper trees are a prohibitive tree in the City's street tree program because the invasive roots would uplift curbs and sidewalks. He stated the Planning Commission voted 5-1 to recommend Council approval of the RPD amendment and Development Agreement. A Commissioner opposed the motion because the drainage concerns expressed by area residents were not being fully addressed and wanted to have more time to have the concern evaluated before recommending approval.

Mr. Rowe informed the Council that there will be seasonal creek flow in the area. The project will be detaining the flow and that after a storm event; the water will drain through the pipe, to the downtown and points south. He addressed proposed landscaping for the project. He said that in prior meetings held with the Water District, they have been amenable to installing paths, trees and enhancements at such time they take jurisdiction from the Corp of Engineers.

Mayor Pro Tempore Grzan stated that there is a desire, in the community, to restore creeks to their natural setting as much as possible. He noted the City has a policy in place that encourages the integration of creeks and streams within development, as much as possible. He did not believe the project takes advantage of integrating paths and landscaping or meets the City's goals.

Acting City Manager Molloy Previsich indicated that City staff has the opportunity to consult with the Water District. She noted that staff indicated the property owner has agreed to deed land to the Water District. Therefore, the City could hold discussions with the Water District to determine if this is the time to install these types of improvements. She noted that this is a piece of a much larger project (PL566), but the City could explore this goal.

Mayor Pro Tempore Grzan stated the City will have other opportunities similar to this in the future and that it does not appear the City will be able to do anything should it continue to follow the installation of the same type of basin construction as seen in the past.

Mr. Bjarke indicated that the developer would be constructing a small channel section that would tie in with the work completed with the Mirasol development up stream. He said the Water District has requested a specific cross section to account for hydrology. It was his understanding that Mayor Pro Tempore Grzan would like to see a more natural flow of the creek; meandering the creek instead of the installation of a water basin. He felt the installation of a meandering channel would be difficult and would not be efficient for the flow of storm water. He indicated that improvements would act as a basin at this time.

Mayor Pro Tempore Grzan recommended the City take the opportunity to address the values as stated in the City's master plan and policies to restore creeks and streams as much as possible, even if done in small segments. If the City continues with this type of development and building basins, he did not believe the City would ever achieve the goal of restoring/integrating creeks and streams, whenever possible. He said that he would like to have the developer assist with this process.

Mayor Kennedy agreed the City would like to preserve creeks/trails in a somewhat natural state. He would like to see an agreement with the Water District that meets the City's goals as they relate to creeks and streams.

Mr. Bjarke felt the Water District would like to proceed with some movements in this direction with concept plans for the remainder of the PL566 channel for the sections that are open channels. It was his belief that there is a desire, on the Water District's part, to have some type of vegetation in these reaches. It was also his belief that the developer was complying with the Water District's request for a specific cross section.

Mayor Kennedy suggested that the City talk with the Water District in order to come up with an agreement that would meet all City goals and visions for creeks.

Mayor Kennedy opened the public hearing.

Bill McClintock, MH Engineering, informed the Council that this project will be building as much of the channel as possible to a certain depth. He informed the Council that the Corp of Engineers designed a trapezoidal flood control ditch. In a meeting with the Water District, they requested this project increase conveyance from this section so that trees could be planted. Therefore, the project modified what the Corp of Engineers designed. He said that the design will be similar to the Mirasol project, but that the full depth cannot be achieved at this time until the installation of the PL566. He indicated that when the culvert is installed at a deeper depth, the low flow section could meander through the area; resulting in the same conveyance. He said that should a 100-year storm occur, it will flood across Hale and Wright Avenues. The project has been designed to handle a 10-year storm, but will be able to hold back water from a 100-year flood and only release what runs off today for the project area. He noted that the watershed and the creek goes up into Llagas Road/Llagas Valley and has only a 3-year capacity. He stated that should the culvert be opened, the project would change the flood pattern downstream unless the channel downstream is improved. He clarified the project is not alleviating the current flooding situation, and that the Water District is reviewing the calculations. He has to show that the water level does not get any higher than it does at this time.

Dick Oliver, applicant, indicated that he has been working over a year with the Water District and the Army Corp of Engineers. He noted that there are existing condominium buildings and homes in the area as well as Hale Avenue. He stated that this project is giving up half of the property for the purpose of trying to alleviate impacts associated with flooding. He said that additional work is needed with respect to hydrology studies. He stated that the key is that this project is not exacerbating the problem in anyway, but alleviating some of the problem as the project would be retaining some of the water. He noted that a similar project was completed in the Mirasol project. The channel in that project was widened, and landscaping installed. He referred to page 7 of the development agreement, item J.iv. that addresses flood control and the configuration of the retention basin. He requested the following be added to the end of the sentence "...or otherwise as approved by the Santa Clara Valley Water District, the Army Corp of Engineers, and Public Works Department." This requested modification is due to the fact that these entities have control over what this project does. They may require something that may be slightly different than the existing wording reflects. He did not want to return and request an amendment to the development agreement when there are outside jurisdictions controlling what can be done.

No further comments being offered, the public hearing was closed.

Council Member Sellers said that everyone shares the desire to have the landscaping increased and enhanced in order to have an attractive site. He said that flooding is an annual occurrence at some level due to the fact that the federal government has continued to fail to fulfill its commitment to provide the PL566 improvements. Until the PL566 project is completed, the City will be forced to develop in piecemeal. He shared the Planning Commission's frustration in proceeding with flood control on a piecemeal basis. However, the City cannot make the federal government move faster to complete the PL566 project. Until this happens, the City is stuck moving forward this way. He would like the City to do as much as it can at this time, but that any more that can be done would flood areas in the downtown. He shared the concern, but felt the City needs to get a commitment from the federal government to complete the project down stream to mitigate flooding. Until that happens, flooding will be piecemeal



mitigated to a moderate degree. He stated he was willing to move forward with the approval actions this evening as it was his belief the project proponent has done everything that can be done.

Mayor Pro Tempore Grzan stated that he realizes this is a small parcel. However, it was his belief that every effort should be made to restore creeks and streams to the type Morgan Hill once had. As projects come before the Council in the future, he would like to know how the project integrates natural creeks and streams. Staff is to report to the Council that it looked at this goal and identified the constraints experienced in the items the City is looking for. This would alert him to the fact the City tried everything it could to meet its goals, values, objectives, master plan, etc., as the City reviews projects. He would like to make sure that every development adjacent to creeks and streams integrate these natural features into development in order to provide a natural setting and enhance their value to the community.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Reading in Full of Ordinance No. 1752, New Series, the Zoning Amendment.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1752, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A 2.65 ACRE SITE LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF WRIGHT AVENUE AND HALE AVENUE (APNs 764-32-017 & 018), by the following roll call vote: AYES: Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Carr.***

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Reading in Full of Ordinance No. 1753, New Series, the Development Agreement Ordinance.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1753, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-07 FOR APPLICATION MP 04-27: Wright Avenue - Dividend (APN 764-32-017 & 018) (amending page 7 of the development agreement, item J.iv. to add the following to the end of the paragraph: "...or otherwise as approved by the Santa Clara Valley Water District, the Army Corp of Engineers, and Public Works Department.") by the following roll call vote: AYES: Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Carr.***

Council Member Carr resumed his seat on the Dais.

**13. DEVELOPMENT AGREEMENT AMENDMENT DAA-04-09: EAST DUNNE-DELCO – Ordinance No. 1754, New Series**

Planning Manager Rowe presented the request to amend Exhibit B, the development schedule, to grant additional time for the project to pull building permits. He indicated that the need for the extension was due to a misunderstanding, on the applicant's part, about project timeline requirements. He clarified that the applicant is not asking for an extension to the deadline in which to commence construction. The applicant expects to get the project underway within the current time limits. During the RDCS Quarterly review, staff notified the applicant of the delinquency. He informed the Council that the applicant has a new project manager on board. In dealing with the project manager, staff has found that he is knowledgeable in the development process and has expedited getting the project back on track. He indicated that the amendment before the Council would be a retroactive extension of time.

Mayor Kennedy opened the public hearing. Don Lapidus, project manager representing Delco, thanked staff for their assistance. He indicated that he is committed to moving this project forward. No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1754, New Series.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1754, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1733, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP 02-06: EAST DUNNE-DEMPSEY (DELCO) ALLOWING FOR A SIX MONTH EXTENSION OF TIME FOR SUBMITTING AND OBTAINING BUILDING PERMITS FOR 8 ALLOCATIONS RECEIVED IN THE 2003 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITION (APNS 817-11-067 & 817-11-072), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

**14. ZONING AMENDMENT, ZA-05-07/ DEVELOPMENT AGREEMENT, DA-05-05: CENTRAL-DELCO – Ordinance Nos. 1755 and 1756, New Series**

Planning Manager Rowe presented the staff report on a request to approve a residential planned development overlay in order to establish a precise development plan and a development agreement for a 39-unit residential development located on Central Avenue, at the intersection of Calle Mazatan.

Council Member Carr was pleased to see that a park was built into the project. He expressed concern that it was built adjacent to Butterfield Boulevard with the idea that it would be a noise buffer. He inquired whether a retaining wall is proposed between the tot lot and Butterfield Boulevard, or was the tot lot the retaining wall between Butterfield Boulevard and the homes.

Planning Manager Rowe said that staff tries to minimize the placement of soundwalls along major arterials. He said that other projects have installed open space areas adjacent to channels as well as open decorative type fencing instead of soundwalls to secure the playground and common areas from the flood control channel. He said that fencing will be provided to keep children safe in the tot lot. It is a city standard that a fence be installed between a roadway and park.

Council Member Sellers noted the storm water detention adds space and is situated on the curve of the road. He expressed concern regarding the installation of soundwalls as he finds them offensive.

Planning Manager Rowe informed the Council that in other sections of the channel, the City has not had a need to pad up and install retaining walls to provide the correct drainage. He said that the areas are depressed and used for further on site detention. This allows for the creation of green space along major arterials instead of the need to install 12-foot soundwalls.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1755, New Series, Zoning Amendment.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1755, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH AN R-2 3,500/RESIDENTIAL PLANNED DEVELOPMENT ON A 7.5 ACRE SITE LOCATED ON THE NORTH SIDE OF EAST CENTRAL AVENUE AT THE NORTHERLY TERMINATION OF CALLE MAZATAN (APN 726-26-004)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1756, New Series, Development Agreement.*

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**Action:**      *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1756, New Series, by Title Only, as follows **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-05-05 FOR APPLICATION MP 04-14: CENTRAL-HU (DELCO) (APN 726-26-004)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**15.    APPEAL OF RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) PROJECT EVALUATION FOR APPLICATION MC-05-10: EAST FIRST-SHIRAZ, FILED BY SHERMAN HOUSE ASSOCIATES – Resolution No. 5972**

Planning Manager Rowe presented the staff report on an appeal to the Planning Commission's evaluation of a proposed residential development under the City's Residential Development Control System (RDCS) for the above listed application. The applicant is requesting an increase in project score in order to achieve a passing score. He addressed the Planning Commission's point scoring and staff's responses to the applicant's point adjustments. Staff did not recommend any point adjustments other than under the Lot Layout & Orientation category (1 additional point for providing shared parking; increasing category points from 12 to 13 points). He responded to questions raised by Council Member Sellers regarding the open space section as it relates to the two private courtyards, points relating to the demolition of the farmer's union building, and improvements to the downtown area relating to general public facilities or pedestrian improvements.

Council Member Sellers stated that this has been an important piece of property in the downtown for some time because one of the significant elements required for the downtown is circulation. He felt additional points should be awarded for traffic control. He noted the property owner could cut off this section and not allow traffic access, or allow access into the parking lot solely for the residents. He inquired whether consideration was given to the fact that this project affords an opportunity for individuals to drive through the area just as they can today.

Mr. Rowe responded that the project proponent did not provide information to acknowledge that the onsite parking garage has a driveway going through the project, and should have included the cost of these improvements. He said that in order for the criteria to apply, it has to be an improvement in excess of the requirements. He did not see that the applicant is proposing any more than what the applicant would typically provide other than the fact that the project would not restrict persons wishing to make a mid block connection. He indicated that points were based on a dollar value for the improvements. Therefore, you would need to know the cost of the parking garage and whether it would equate to an additional \$1,100 per unit. If so, the project would be entitled to an additional point.

Council Member Sellers expressed concern that there is a difference in developing the downtown and trying to make Measure C work for the downtown. He noted that 99% of the time, over the past 25 years, downtown lots have sat empty and that 100% of the property is paved over. Ten percent of this property would be landscaped in order to achieve drainage. However, the project does not receive credit because it is not a sufficient percentage compared to a bare lot. He understood that staff applied the

standards accordingly, but expressed frustration in the difficulty downtown projects have in attaining points. He felt there were significant challenges to developing projects in the downtown that are impacted by costs that you do not have when you deal with bare land. He did not believe you can build a unit at the size and scope in the downtown that you can in other areas of the city. Therefore, the ability to meet all points is a big factor.

Council Member Carr inquired whether there was a way the Planning Commission or staff could review this project in connection with the Sherman project. He said that it was his belief that the applicant, in looking for points, was relying on the two developments together. He noted that staff was addressing the two projects as though they were being considered as one project in the review.

Planning Manager Rowe said the Planning Commission found the front project could build independently of the rear project, but would be costly to do so. At the January 10 Planning Commission meeting, it was stated that if the rear project did not receive an allocation, the front project would not move forward as they need to be built as one project. He did not believe that as a stand alone project, the project would have scored differently. He said the two projects were submitted as separate applications because they are located on separate lots and that the back portion allows 40 dwelling units per acre and the front project allows a maximum of 18 dwelling units per acre. Therefore, the property owner had to treat them as separate projects because of the zoning limitations.

Mayor Kennedy opened the floor to public comment.

Leslie Miles, representing the property owner, indicated that this is the second time the project has gone through the Measure C process. She did not believe a downtown project could score well in a suburban scoring criterion. She stated that this past year she worked with staff, a couple of Planning Commissioners, and other individuals to analyze the existing Measure C process to make it more downtown friendly. In the process, she found she was continually thwarted; particularly under the open space category.

Ms. Miles addressed Open Space B1d. She indicated that this project previously received 1 point. She referred to sheet A1.3 that depicts how the two courtyard spaces connect. She said that the criterion states you can be adjacent to open space. If the open space is a public space or publicly owned space, a developer needs to make sure there is an agreement in place. From an open space stand point, she felt the two courtyards relate. She said the courtyard from the adjacent project has a high percentage of business use. It is the intent of the zoning to provide a level of activity in this courtyard that could spill into the courtyard of the Shiraz development. Therefore, the two projects could be integrated as one. The two projects were separated because of the two different zoning districts. She said that the opportunity zoning was given to the Shiraz site, but was not given to the Madeline project site. As the projects were being designed, it was found that there were zoning issues. Therefore, the projects were separated, but provided reciprocal agreements. If she could have been able to design the two parcels as one project, she could have maximized a higher percentage of units on the Madeline site and achieved significantly more points for both projects. She clarified that it was not the intent to achieve points across both projects, but to deal with a difficult situation regarding the current zoning that eliminated the ability to compete. She indicated that it was the intent of the Measure C process to include a level of

environmental concern. She noted that this is a suburban community, and that more urban development is being done in the center of the downtown.

Ms. Miles referred to page 277, Exhibit A, indicating that the Planning Commission agreed the open courtyard should be subtracted from the building coverage calculations. After the subtraction of the courtyard space, it resulted in a building coverage of 60%. She noted that this was documented in her calculations as well as by the planning department. She requested an additional 7 points; increasing the total category points from 5 to 13 for providing 60% building coverage. She referred to Section 18.78.220, the criteria for open space/building coverage. She recommended that in the future, the City look at 60% building coverage as being ideal; awarding 9 points. She felt the focus for downtown development is to provide a level of density and that this criterion does not met this focus. She informed the Council that under last year's application, the project received two points under category B1e. She stated that the adjacent project would be demolishing the farmer's building. However, the project narrative did not address the farmer's building; yet, received two points. She said that it was assumed the project would receive the same points for the same writings in a subsequent application. She said that there were two instances where the prior submittal received points not awarded to this application. She felt the project should be granted two points under this category instead of one point.

Ms. Miles noted that it was indicated there were opportunities to purchase points. In looking at the project plans, it can be noted that construction is of a podium type construction. She indicated that a podium type construction is extremely expensive, and that the opportunity to purchase points would make the project infeasible. It is the idea to encourage downtown development; encouraging the level of activity and residents needed in the downtown to make it viable.

Ms. Miles addressed the public facilities category. She said the project proposes new electroliers, paving, and trash receptacles; creating an active and functional street scene that will make the downtown a livable and fun place to be. She presented renderings of courtyard spaces that would provide an idea of what the open spaces would include. She indicated that in this case, public facilities are provided on the street. Included in the Council's packet are cost estimates that clearly indicate that these costs are substantial. She stated that she has data that can better calculate the information. She requested 2-3 additional points; given the costs for these improvements.

Ms. Miles addressed Lot Layout & Orientation. She felt the back parking area meets the criteria. It was also her belief the reciprocal parking agreement made sense as many projects have reciprocal agreements for projects with excess parking to share with a project that does not.

Ms. Miles addressed Natural & Environmental Features, B1b. She indicated that this category received a point last year for going from 0% landscaping to 10% of the project being landscaped, but did not receive a point this year. She indicated the project would maximize site use without increasing runoff.

Ms. Miles requested the following additional point modifications: 1 point under Open Space for providing a combined open space courtyard; 1 extra point for the historical criteria given last year and not given this year; 2 points for open space; up to 3 points for public facilities; 1 point for Lot Layout & Orientation; and the 1 point received last year under Natural & Environmental Features.

Council Member Tate noted that the staff report indicates Ms. Mile's request for a point under Natural & Environmental Features is new information that was not included in the application filing.

Ms. Miles clarified that her response included a few comments because the project did not receive a point under Natural & Environmental Features. She indicated that the project offers the same commitment this year under this category that was included in last year's project narrative. In response to Council Member Carr's question, Ms. Miles stated that this year's application does not rely on the Madeline project where last year's project submittal did, in various categories.

Council Member Carr noted the Planning Commission minutes includes a statement that the ownership of the Granada Theater resulted in an ownership change in this project, with a desire to develop this site as a whole. He requested clarification of this statement.

Ms. Miles stated that Mr. Mobedshai is also the owner of the Granada Theater. Therefore, there is an intention of making sure that this development and the Granada Theater work together. It is the intent to maintain the historic nature of the Granada Theater and maintain the relationship to the Granada and the adjacent Votow building. Had this project received enough points last year, this project would have been able to move forward. She indicated that construction of Depot has impacted the ability to rent space. If projects are built piecemeal, the disruption to the downtown would be large. She indicated that the cost estimate chart contains slightly new information in terms of costs for concrete sidewalks; noting that these costs have substantially increased from 2005. She indicated that this information was not reviewed by the Planning Commission and was not a part of the application.

Manou Mobedshahi, applicant, informed the Council that he submitted an application to get the City's attention is a response to the talk about developing the downtown area. He indicated that commercial space is proposed on the second floor that provides public space. He said that in other cities, rooftop gardens are constructed, and are regarded as green space. This project proposes a second level common space.

No further comments were offered.

Council Member Tate felt the Council should have the discussion on criteria for downtown at a future date as this is not the subject before the Council this evening. He said that the criterion in place is the only criterion that can be used to judge the appeal. He recommended the Council go through the appeal, point by point, relative to the criterion in place. He felt the City has learned a lot in this competition as it relates to downtown development, and that there was a lot that can be done, but not tonight.

Mayor Kennedy indicated that he met with the applicant prior to this evening's meeting.

Council Member Sellers indicated that he had a brief conversation with the project architect.

Open Space, Section 18.78.220 B1d

Council Member Sellers stated his support of awarding 1 point because the project affectively offers public space adjacent to office space. He did not believe the public agency issues are germane, and that more significant is that open space will be provided. He would consider this similar to the construction of a pocket park, public in the sense that anyone can have access to this public open space.

Council Member Tate felt the Council needs to apply the criteria in place and that changing the criterion would be a different discussion. He noted that the criterion states that a project proposes public parks and open space areas. He did not believe what is being proposed is a public facility, and therefore does not support granting the point.

Interim City Attorney Siegel indicated that the Council will need to pass a resolution with findings should it disagree with staff's recommendation.

Mayor Pro Tempore Grzan said he has heard it mentioned that the criteria for the downtown may change, and that the Council may need to look at the criteria at a later date. Therefore, the Council is tied to applying the current criteria to this project.

Council Member Sellers acknowledged that the Planning Commission has stretched the criterion's definition to a significant degree. However, the City may need to go back to the ballot box regarding downtown development.

Council Member Carr noted the staff report indicates the Planning Commission did not believe the project warranted a point because it did not provide access to a public park or open space beyond the project boundary. He said that the strict interpretation of the criteria would not dictate awarding a point; even if all Council members agree that access to the courtyards is considered public space.

Mayor Kennedy and Council Members Carr indicated that they were leaning against awarding the additional point.

#### Open Space 18.78.220 1B

Council Member Sellers indicated that he could support the Planning Commission's recommendation in not adjusting the points.

Council Member Tate stated that he does not believe two projects should be considered together as they should stand alone. He did not believe the Madeline project should receive points because it is tearing down a historic building. However, he did not believe an adjacent project should be deducted points if it is not considered as being the same project. He noted that the project received a point last year, and would support adding a point under this category.

Council Member Sellers and Mayor Kennedy stated their support of Council Member Tate's recommended point adjustment.



Council Member Carr felt the Council needs to apply the criteria throughout in order to be consistent. He felt there are advantages in considering the applications in various categories. As long as the Council is consistent, he felt this is an area where the project is affected by the Madeline project.

**Action:**        *There was consensus support for changing the number of points under this category to 2 points. Findings: these are independent projects; a project taking down a historical building should not impact the other project.*

### Open Space B.2

Council Member Tate said that you have a criteria and that you have to interpret one way or another. The project needs to receive zero points under this category. It was his belief that the Planning Commission was inventing criteria, and did not believe this was appropriate. He would not support adding points.

Council Member Sellers supported granting the additional 2 points.

Mayor Kennedy noted the project is providing 60% building coverage and meets the criteria under the standards, as spelled out. He stated his support in granting the additional 2 points for a total of 7 points. As for findings, the criteria states 7 points for 60% building coverage.

Council Member Carr noted the staff report states the building, as defined in the criteria, is actually 90%. He agrees that the way you deal with open space in the downtown has to be different. However, based on the current criteria, he is in conflict.

Council Member Sellers noted the Planning Commission awarded partial credit because the courtyard space was not open at the ground level. He said that the criterion does not state that open space has to be at ground level.

Mayor Kennedy recommended that Council Member Sellers' point be clarified with future language revisions. It was his belief that the project meets the 60% open space, and would support the additional points.

Mayor Pro Tempore Grzan said that it is not easy for him to award the additional points. He understood the suggestion of having a different criteria for the downtown. However, the Council is being asked to consistently apply this criteria to this project and other projects. He indicated that he reviewed staff's recommendation, and noted that 90% of the project is building coverage. He stated that he has mixed feelings about this issue.

Council Member Tate felt the Council is interpreting building coverage incorrectly as it is leaning toward the Planning Commission's scoring interpretation. He did not believe their scoring made sense.

Council Member Sellers felt the Council is well within its purview to interpret the criteria as the Planning Commission was in making their interpretation, given the ambiguity of this criteria.

Mayor Kennedy noted a majority of the Council members in support of awarding 7 points under this category.

#### Public Facility 18.78.240 B2f

Council Member Sellers said that the fundamentally, the applicant did not ask for a point at time of Measure C submittal. He inquired whether staff has the latitude to state the project should receive a point as the project provides for traffic control.

Interim City Manager Molloy Previsich noted the Planning Commission awarded 1 point under this category based on the applicant's clarification at the interview.

Planning Manager Rowe responded that the applicant did not pursue points for providing traffic control, nor did they provide cost estimates to determine the point value to be awarded. He indicated that a point was granted by the Planning Commission based on the applicant's estimate presented at the Planning Commission interview.

Action: It was the consensus of the Council not to grant additional points.

#### Lot Layout & Orientation

Action: It was the consensus of the Council to concur with staff's recommendation.

#### Natural & Environmental

Council Member Tate inquired whether information was provided by the applicant at time of application submittal.

Planning Manager Rowe informed the Council that a year ago, the project received 1 point for providing new areas for landscaping pervious surfaces. Ms. Miles has indicated that this commitment has not changed this year. What changed was the information contained in the January 17, 2006 appeal report that addressed restricting the amount of run off. The appeal letter states the project will restrict run off by detaining it within the courtyard fountain area, and then controlling its release. He indicated that this is new information. Also, the public facilities category states that no on site retention is required. Therefore, contradictory information was provided. However, what was pointed out is that the information is the same as a year ago when the project received a point. He did not believe the applicant raised this concern on January 10, 2006. However, the project has been consistent in the criteria and that the circumstances have not changed. He clarified that the inconsistencies between the two applications is found in two different places.

Council Member Sellers said that in reviewing the criteria and the way it is written, he felt it is a different situation when you are dealing with land that is 100% bare as opposed to 100% impervious land (all parking lot). He felt that converting the 10% of the 100% impervious land into landscaping

would result in a 100% improvement. He noted the project satisfies the criteria of restricting the amount of water run, off and proposes to install landscaping.

Council Member Tate agreed that the criteria needs to be changed. He concurred that the project would reduce the 100% impervious situation to 90%.

Mayor Kennedy stated he could support granting one point because the project would improve drainage. He felt it difficult to provide this improvement in a downtown urban environment.

Council Member Carr agreed with Mayor Kennedy's position. He expressed concern with the process available to the Council. Even though the Council believes the project qualifies for an additional point, the project proponent did not provide the information at time of submittal to qualify for the point.

Planning Manager Rowe said that the installation of 10% landscaping was information included as part of the initial application filing. The new information is that the project applicant proposes to detain the water runoff from the remaining 90% impervious areas. He clarified that under the Public Facilities section, it states that it is not necessary for the project proponent to detain water runoff because the offsite improvements (e.g., curb, gutter and storm drains) on the street are adequate to handle the present runoff. Therefore, drainage offsite has been reduced by the introduction of the 10% pervious area with landscaping.

Council Member Sellers felt the information provided was sufficient for the Council to interpret the criteria in such a way that states that the appellant would be reducing the impervious surface.

Council Member Tate supported awarding 1 additional point for decreasing the impervious area by 10% through the introduction of landscaping.

Acting City Manager Malloy Previsich noted that 1 point was awarded under this category in last year's competition.

Action: It was the consensus of the Council to award 1 point under this category based on the criteria as stated.

Mayor Pro Tempore Grzan referred to the open space category. He inquired whether the Council would be setting a precedent such that a project proponent builds a carport, has a plant on top, and has access to the top of the carport via a ladder. Would this area be considered as open space?

Interim City Attorney Siegel said that the example presented by Mayor Pro Tempore Tate would not be considered as usable open space. Also, access to the carport via a ladder would not meet code compliance.

Mayor Kennedy stated that he supports granting the 1 point under open space as open space was used in a project adjacent to Rockridge Bart and that it was an effective use of open space. If you look at the

Monterey Plaza area, it contains open space in concrete and railing, and he views this open space as comparable to open space.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5972, Modifying the Planning Commission's Evaluation by adding 5 additional points to the project as follows: 1 additional point under Open Space B1e, 2 additional points under Open Space B2, 1 additional point under B7, and 1 additional point under Natural & Environmental; amending the resolution as follows: the fourth Whereas amended to state "...to be adjusted"; Section 1b amended to read: "The City Council finds that the projects are independent so the fact that an adjacent project requires removal of a historic structure should not penalize the applicant. Two points shall be awarded." Section 1c amended to read: "The City Council modifies the Planning Commission's evaluation under section B2 in the Open Space category as the City Council finds that it meets the 60% open space criteria independent of the location of the open space." Section 1f amended to read: "The City Council finds that points were awarded in this category last year and the project reduces the impervious surface from 100% to 90%. 1 point is awarded."*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **16. MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND AMERICAN ANCHORPOINT ACADEMIES, OAK MEADOW PLAZA, ET AL REGARDING JOINT SUBMITTAL OF AN APPLICATION THAT WOULD RESULT IN IMPLEMENTATION OF URBAN LIMIT LINE/GREENBELT STUDY RECOMMENDATIONS FOR DEWITT/EDMUNDSON AREA**

Contract Planner Bischoff presented the staff report, indicating that last June; staff brought before the Council the recommendations of the advisory committee for the greenbelt and urban limit line study. The Council reviewed the recommendations, and directed staff to proceed with an environmental evaluation of the recommendations. The Council also directed staff to draft the general plan amendments required to implement the study. He informed the Council that staff is approximately 90% through with this and that the Council will conduct public hearings on the environmental review and the proposed general plan amendments in April 2006.

Mr. Bischoff informed the Council that the advisory committee's final report included a number of recommendations about the 118 acre area referred to as the Anchorpoint property located west of Sunset, north of Edmundson and east of DeWitt Avenue. He identified the recommendations of the advisory committee as follows: 1) 20 acres of the Anchorpoint property to be assigned a general plan designation of single family low (3 dwelling units per acre). The property would be included within the urban growth boundary and the urban service area, and would be annexed into the city with the expectation that the property would be developed with no more than 60 homes. 2) The property owner would be allowed to develop one home on each of the four lots fronting Edmundson Avenue, in the

County. He indicated that two of the homes would be located near Edmundson Avenue and that on the two westerly lots; the homes would be located on the north side of a knoll; not visible from Edmundson or DeWitt Avenues. 4) In exchange for building the four homes and including the 20 acres in the City Limits, approximately 84 acres of the 118 acres would be placed into an open space easement so that no development of the property would occur. He felt this a great opportunity for the City as the open space easement would ensure that all of this hillside scenic resource would remain permanent for many generations to come.

Mr. Bischoff noted that it is being requested the Council review a memorandum of understanding (MOU) between Anchorpoint and others who are interested in purchasing the Anchorpoint property and the City with respect to the duties, obligations, and expectations the City and property owners would have for the transactions described above. He said the MOU is consistent with all of the recommendations of the advisory committee with the following exceptions: 1) Allows for the potential of locating one house to be built on 29 acres, as long as it is not visible from DeWitt Avenue. The Council accepted this request of the Anchorpoint representative, and directed staff to work with the property owner to see if this request was possible. It is staff's belief that the request is possible, with the exchange of property owned by the City. He informed the Council that public works staff has reviewed and supports the proposed land exchange for the same amount of property with access to be taken from the existing driveway which services the water tank; and that it is consistent with the provisions included in the MOU. 2) Access to the two westerly parcels located on Edmundson Avenue is to be from the water tank access road. This would mitigate the concern of the advisory committee about the visual impacts of driveways being cut through the property to access homes to be located on the back of the property. He said that the only circumstance to which the advisory committee agreed to allow access via Edmundson Avenue is if the Planning Commission determines that it is infeasible to gain access via the extension of the existing driveway that serves the water tank. The MOU states that access would be provided via the access drive to the water tank unless the County finds the access to be infeasible. He noted the County would have jurisdiction of these parcels. Staff supports this modification. 3) The advisory committee agreed to allow up to 20 acres in the city limits as long as the land is less than 10% slope. The engineer for the property owners have surveyed the area and have found there are approximately 19 acres on slopes of 10%. The property owners would like to include 20 acres; 19 acres to be below 10% slope and 1 acre to consist of slopes between 10%-12%; this acre is to be located on the backyards of homes to be constructed. Staff believes this amendment is acceptable and generally consistent with the committee's recommendation. 4) The advisory committee is recommending that the open space easements over most of the properties be recorded within a year of the property being included within the urban growth boundary. A clarification included in the MOU states that should the City or LAFCo not approve the expansion of the urban service area or annexation of the property, the easements would be eliminated. Staff recommends the Council adopt the MOU as presented. He noted that this is a non binding MOU. Should the City decide not to annex the property or the property owner decides they want to leave all property in the county; developing 10-12 homes in the county, they can do so and walk away from the MOU. He informed the Council that the development potential for the property to be annexed is up to 60 homes. He indicated that a golf course is no longer being proposed.

Mayor Kennedy indicated that he was chair to the Urban Limit Line Committee. He stated that a lot of hard work and cooperation by the County, property owners, and staff went into the proposal in order to

come up with an agreement that protects open space and the greenbelt. The MOU also helps the City move forward with establishing a greenbelt around the city. He thanked staff, Steve White, Anchorpoint Academies and others who worked on the MOU to bring it to this point.

Mayor Pro Tempore Grzan stated that he also served on the Urban Limit Line Committee and that he does not share some of the thoughts as presented by Mayor Kennedy. He said that these were contentious items that were fought for by the Committee.

Mayor Kennedy opened the floor to public comment.

Bart Hectman indicated that he was speaking on behalf of the property owners of the 118 acres that are the subject of the MOU, along with the City parcel. He noted that there are a number of property owners who signed the MOU, Anchorpoint being one of the signers. He said that representatives for Anchorpoint, Oak Meadow, and the project engineer were in attendance to answer questions the Council may have. He said that for the past six months, everyone worked hard on the MOU in a cooperative and collaborative way. The MOU would be a working framework for how the property can be developed and how to deliver the open space; noting that this is a complicated process. He indicated that the MOU reflects the detail work that resulted in something that will function well. He felt the proposal before the Council would be great for the city, county and the surrounding neighbors. He concurred with staff's recommendation that the Council execute the MOU.

No further comments were offered.

Mayor Pro Tempore Grzan said that this particular piece of property came before the General Plan Task Force prior to coming before the Urban Limit Line Committee. At that point, the Sunset Avenue residents expressed concern with any type of development that would occur adjacent to their property that would obscure their views of the hillside. At the General Plan Task Force meeting, Barbara Sullivan, a member of the Task Force and a neighbor, requested the Council be careful in the planning of this area. The Urban Limit Line Committee determined the City could have developed the urban limit line to follow the housing development; preserving the area as it exists. It was the Committee's belief the City could allow the development of 60 homes on the proviso that other property(ies) be placed into open space. In particular, the house on DeWitt Avenue was not to be built because it may obscure the view of the hillside or become a presence. He stated that there are advantages for the City to receive open space, but there are certain advantages for the developer to receive the ability to build 60 homes that would not normally be built in the County. He does not have issues with the 60 homes, but does have an issue with exceeding the 10% slope and with a home being built on DeWitt Avenue. He would support moving forward with the MOU; taking out these particular items.

Mayor Kennedy noted that the home to be built with access from DeWitt would not be visible from DeWitt or Edmundson Avenues.

Mayor Pro Tempore Grzan said that should the area be used as open space with access, the home would be visible to individuals climbing or hiking the area and would become an obstruction.

Council Member Sellers indicated that he visited the site and felt it would be an attractive trade off because of its location and what the City is receiving in return. He acknowledged the City is not receiving 100% of what it wants, but neither is the developer. He felt the MOU represents a significant amount of effort and compromise by all parties. He was comfortable with the MOU as it addressed most of the City's issues. He noted there would be no construction on the 10-12% slope, and this area would be backyards to homes built.

Mr. Bischoff said that he estimates that 9-12 homes could be built in the unincorporated areas, and that the City would have no control as to the location of the homes if built in the county without this agreement.

Mayor Pro Tempore Grzan noted the City was looking toward developing a hillside ordinance in conjunction with the County; similar to existing agreements with other agencies. The City would seek the County's cooperation such that they would prevent hillside development. It is his hope the City would continue to pursue and work with the County toward not allowing development on hillsides.

Mr. Bischoff informed the Council that the County is talking about amending its code, but that he does not know the timeframe for proposed amendments. It was his belief that should the City be successful in working with the County, the impacts of the homes could be mitigated.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-1 vote with Mayor Pro Tempore Grzan voting no, **Directed** the Mayor to Execute the Memorandum of Understanding on Behalf of the City Council.*

## **17.     DRAFT BALLOT LANGUAGE FOR A JUNE 6, 2006 SPECIAL ELECTION**

Interim City Attorney Siegel presented the staff report, indicating that at the meeting of December 14, 2005, the Council requested that staff prepare ballot language in order to remove the current restriction on the Cochrane Plaza, the current location of the Target Store. The ballot measure would ask voters to remove the grocery supermarket restriction contained in the ordinance. He informed the Council that it has been provided with a revised resolution that contains the operative language of the ballot measure. He indicated the Council needs to approve the ballot language that would be included in the June 6, 2006 special election in order to remove the restriction. The language of the ballot measure would return to the Council on March 1, along with the environmental review. Assuming that the environmental review is acceptable, the Council would call for an election on the ballot measure. In the June election, citizens would vote to either change or retain the ordinance. He informed the Council that it does not have within its purview the ability/authority to change the ordinance without a vote of the people. Staff would like to know whether the Council is comfortable with the language as the Council would need to decide on March 1 whether it supports the language as this is the last regular Council meeting before the County's deadline to submit a ballot measure. He informed the Council that the draft ballot language has been provided to Kirsten Powell, counsel for the Morris family, owners of Cochrane Plaza. He indicated that at 5:30 p.m. this evening, he received an e-mail from Ms. Powell expressing their support of this proposal and their offer of help with this issue. He stated that Ms. Powell reported that they understand that Target is actively attempting to lease the site, but that the Morris family is not

aware whether it has been leased at this point. However, they are satisfied that Target is making an effort to actively lease the site and not leave it vacant. He read the proposed ballot measure language into the record and indicated that he would be correcting a typo contained in one of the “Whereas.”

Council Member Carr inquired as to what point the City can decide not to move forward with a ballot measure should Target be successful in leasing the site acceptable to the Morris family. He noted the City would be able to save \$49,000 by not proceeding with a ballot measure should the site be leased.

Interim City Attorney Siegel was not aware of the timeline for ballot measure removal. Staff would determine the timing for the removal of the ballot measure and the cost savings to the City.

Council Member Tate inquired whether the ballot language needs to reference the specific ordinance number. He felt it appears to be a complicated ballot language.

Interim City Attorney Siegel informed the Council that it is the public that needs to amend the ordinance. The actual amendment needs to appear in the ballot language as you need to remove the restriction of grocery supermarkets as well as add the use as a permitted use for the portion of Morgan Hill Business Park zoned PUD commercial; Cochrane Plaza.

Council Member Sellers recommended the word “and” be deleted. He requested the Council be advised as to the status of the leasing of the Target site. He did not want to move forward with a ballot measure should Target be able to lease their building. He requested staff forward election dates and deadlines to the owners/representatives of Cochrane Plaza as well as Target representatives.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *By consensus, the City Council **Approved** Draft Ballot Measure language Relating to the Removal of the “Grocery Supermarket” Restriction from the Cochrane Plaza Shopping Center with the following amendments: “Do the citizens of the City of Morgan Hill, California ordain that Ordinance No. 835, N.S. section 2, a.2, regarding the portion zoned PUD commercial ~~section~~ of the Morgan Hill Business Park, specifically the existing Cochrane Shopping Plaza Shopping center, be amended to remove the prohibition on grocery supermarkets ~~and~~ to add grocery supermarkets as a permitted use.” Staff to modify the language contained in the “Whereas” section of the resolution.*

**18. LEASE WITH CROWN CASTLE, INTERNATIONAL FOR CELLULAR INSTALLATIONS AT NOB HILL WATER TANK SITE**

Assistant to the City Manager Dile informed the Council that the City has had cellular installations on the Nob Hill water tank site for over 10-years. The lease with Horizon expired a couple of years ago and that the lease was assumed by a property management firm named Crown Castle. She indicated that City staff has been in negotiations for over a year to come to new lease terms. She stated that the new lease would allow for a five year initial lease with the possibility of two additional five year extensions. The agreement would also provide greater protections for the City in terms of access to the site and bringing



it to current standards. It also allows staff to monitor the site and includes requirements pertaining to liability and insurance. The lease affords the City advantages in allowing additional cellular providers to locate on the property without the City having to negotiate a separate lease with each new provider. The lease acknowledges that any new carriers would need to go through whatever planning/approval process is in place at the time.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Pro Tempore Grzan indicated that the Utilities & Environment Committee reviewed the lease; noting that this is an existing cellular site. Therefore, the Committee did not see any problems with the revisions to the contract. He informed the Council that the Committee is looking at all of the leases and other tower installations as they come before the City. Therefore, the City will have an opportunity to review the leases as they come before the City. With regards to this item, the Committee did not have an issue with the lease.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to Execute Lease Agreement with Crown Castle, International for Existing and Future Cellular Installations on the Nob Hill Water Tank Site.*

## **19. CONSIDERATION OF COUNCIL'S 2006 POLICIES AND GOALS**

Council Member Tate noted the Council spent a lot of time at the retreat talking about conducting more publicity for the City. He felt the Council was skirting an issue that had to do with improving the image of the City. He did not know if “improve the image of the City” was the right expression or whether another phrase would be appropriate such as “public perception.”

Mayor Pro Tempore Grzan felt the Council was looking at communication. It was his belief the Council would be putting out its own newspaper on a weekly basis.

Council Member Tate said that it was his belief the Council wanted to include a goal for communication. He did not know whether this goal needs to be incorporated and/or whether the term “image” or “perception” were the right words to use.

Mayor Kennedy said the Council discussed “touting” the City’s accomplishment.

Council Member Sellers stated that the Community & Economic Development Committee was tasked to prepare a communication and marketing plan that would include a report to downtown stakeholders and the entire community. The information would include the accomplishments and goals for downtown improvements. He felt it may be helpful to have a broader application. He said it would be a challenge to figure out which Council committee would take on this goal.

Council Member Carr recommended that the ad hoc committee be tasked with this goal.

Council Member Sellers said that City Manager Tewes would have pointed out to the Council that the ad hoc committee would be merely recommending a process in April 2006.

Mayor Kennedy said the ad hoc committee would be returning to the Council with steps that would accomplish the goal.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Policies and Goals for 2006, as amended.*

## **20. RECRUITMENT EFFORTS TO FILL UPCOMING VACANCIES TO BOARDS AND COMMISSIONS**

Council Services and Records Manager Torrez presented the staff report, indicating that in July 2005, the Council adopted the Fundamental Principals for a Recruitment, Interview and Appointment process. One action item contained in the Principals is Council review of the applications to ensure that appropriate questions are incorporated that would assist the Council in the evaluation of the applicants. She informed the Council that staff liaison members to the boards and commissions reviewed the various applications and that various applications were amended to include additional questions. She requested the Council indicate whether staff has incorporated enough information and relative questions to the board and commission applications that would assist the Council in the interview process.

Council Member Tate requested that the recruitment process for the Library, Culture & Arts and Parks & Recreation Commissions commence in February, but defer the interviews to April 2006 while staff recruits for the other boards and commissions.

Interim City Attorney Siegel informed the Council that it would need to extend the terms of the Library, Culture & Arts and Parks & Recreation Commissions as it would take two Council meetings to conclude the interview/appointment process.

Ms. Torrez informed the Council that the Municipal Code states that terms on the Library, Culture & Arts and Parks & Recreation Commissions expire on April 1. Therefore, should the Council wish to conduct interviews for these two commissions in April, it would necessitate Council extension of the terms of these commissions until the interview/appointment process is concluded.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *It was the consensus of the City Council to **Direct** staff to return with a revised approach.*

## **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

- Update on the Mitigation Measures for the Mathematics Institute/Golf Course (Mayor Pro Tempore Grzan)

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:54 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**